

ADVICE TO APPLICANT

PLEASE READ CAREFULLY. FEE WILL NOT BE RETURNED.

- I. Aliens Eligible for Suspension of Deportation** - You may be eligible to have your deportation suspended and to become an alien lawfully admitted to the United States for permanent residence under section 244 of the Immigration and Nationality Act ("INA"). To qualify for this benefit, you must establish in a hearing before an Immigration Judge that:

- A.** you have been physically present in the United States for a continuous period of not less than 7 years immediately preceding the date of this application,

Note: *If you have been battered or subjected to extreme cruelty in the United States by your United States citizen spouse or parent, or you are the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent, you must establish that you have maintained continuous physical presence in the United States for 3 years or more.*

Note: *If you are deportable under paragraphs (2), (3), or (4) of section 241(a) of the INA, you must establish that you have been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act or assumption of a status constituting a ground of deportation.*

Note: *If you have served on active duty in the Armed Forces of the United States for at least 24 months, you do not have to meet the requirements of continuous physical presence in the United States. You must, however, have been in the United States when you entered the Armed Forces. If you are no longer in the Armed Forces, you must have been separated under honorable conditions.*

- B.** you are and have been during the qualifying period described in "A" above a person of good moral character as described in 101(F) of the Act, and
- C.** your deportation would result in extreme hardship to you or your United States citizen or lawful permanent resident spouse, parent, or unmarried child under 21 years of age.

Note: *If you are deportable under paragraphs (2), (3), or (4) of section 241(a) of the INA, you must establish that your deportation would result in exceptional and extremely unusual hardship to you or your United States citizen or lawful permanent resident spouse, parent, or unmarried child under 21 years of age.*

- II. Aliens NOT Eligible for Suspension of Deportation** - You are not eligible for suspension of deportation if you:

- A.** entered the United States as a crewman after June 30, 1964,
- B.** were admitted to the United States as, or later became, a nonimmigrant exchange alien as defined in INA section 101(a)(15)(J) other than to receive graduate medical education or training and are subject to the two-year foreign residence requirement of INA section 212(e), but have neither fulfilled nor obtained a waiver of that requirement,
- C.** were admitted to the United States as, or later became, a nonimmigrant exchange alien as defined in INA section 101(a)(15)(J) in order to receive graduate medical education or training, regardless of whether or not you are subject to or have fulfilled the two-year foreign residence requirement of INA section 212(e), or
- D.** are subject to deportation under INA section 241(a)(4)(D) as an alien who assisted in Nazi persecution or engaged in genocide.

III. How to Apply for Suspension of Deportation

In order to apply for suspension of deportation, you must answer all the questions on the attached Form EOIR-40 fully and accurately. An instruction sheet is attached to guide you in completing your application, paying the filing fee, serving your application on the Immigration and Naturalization Service, and filing your application with the appropriate Immigration Court. Please read the instruction sheet carefully before completing your application.

INSTRUCTIONS

1. PREPARATION OF APPLICATION.

To apply for suspension of deportation, you must fully and accurately answer all questions on the attached Form EOIR-40. A separate application must be prepared and executed for each person applying for suspension of deportation. All applications from a family unit may be submitted together and may be supported by the same documentary evidence, if practicable. An application on behalf of a child under 14 years of age shall be executed by a parent or guardian.

Your responses must be typed or printed legibly in ink. Do not leave any questions unanswered or blank. If any questions do not apply to you, write "none" or "not applicable" in the appropriate space.

To the extent possible, answer all questions directly on the form. If there is insufficient room to fully respond to a question, please continue your response on an additional sheet. Please indicate the number of the question being answered next to your response on the additional sheet and sign, date, and securely attach the additional sheet to the Form EOIR-40.

2. BURDEN OF PROOF.

The burden is on you to prove that you meet all of the statutory requirements for suspension of deportation under section 244 of the Immigration and Nationality Act and that you are entitled to such relief as a matter of discretion. To meet this burden, your responses to the questions on the application should be as detailed and complete as possible. You should also attach to your application any documents that demonstrate your eligibility for suspension of deportation ("supporting documents").

3. SUPPORTING DOCUMENTS.

Unless you qualify through military service, you should submit documentary evidence to show that you have been physically present in the United States for the required period. Documents which may evidence your physical presence in the United States include, but are not limited to, bankbooks, leases, deeds, licenses, receipts, letters, birth records, church records, school records, employment records, and evidence of tax payments.

You should submit documents showing that you are and have been during the entire period of physical presence in the United States required for eligibility for suspension of deportation a person of good moral character. It is recommended that you submit police records from each jurisdiction in which you resided during such period. To show good moral character it is recommended that you submit the affidavits of two witnesses, preferably citizens of the United States, and if you are employed, one from your employer, who can vouch for your good moral character during such period. The affidavits from your employer should include information regarding the nature and duration of your employment and your earnings.

You should submit official certification to establish your relationship to those you claim would suffer hardship by your deportation, and if such persons are citizens of the United States, evidence of their citizenship. Documentary evidence of such relationships may include, but are not limited to, birth records, marriage certificates, proofs of divorce or of termination of a marriage, and death certificates.

You should also submit with your application any temporary entry permit issued at the time of entry into the United States. The Immigration Judge may require you to submit additional records relating to your request for suspension of deportation. These documents may include, but are not limited to, documents which reflect payment of taxes, court convictions, or payment of child support during your physical presence in the United States.

The original of all supporting documents must be available for inspection at the hearing. If you wish to have the original documents returned to you, you should also present reproductions.

4. REQUIRED DOCUMENTS.

Each applicant 14 years of age or older must also complete a Biographic Information Form G-325A and a Fingerprint Card, FD-258. You will be given instructions on how to complete this requirement. You will be notified in writing of the time and location of the Application Support Center or the designated Law Enforcement Agency where you must go to be fingerprinted. It is important to furnish all the information on the card.

(Instructions continued on next page)

5. TRANSLATIONS.

Any document in a foreign language must be accompanied by an English language translation and a certificate signed by the translator stating that he/she is competent to translate the document and that the translation is true and accurate to the best of the translator's abilities. Such certification must be printed legibly or typed.

6. PHOTOGRAPHS.

You must submit two glossy, unretouched, color photographs of yourself taken within 30 days of the date of this application. These photos must have a white background and must not be mounted. The dimension of your facial image in the photograph should be about 1 inch from chin to top of hair and you should be shown in 3/4 frontal view showing the right side of your face with your right ear visible. Using a pencil or felt pen you should lightly print your name and alien registration number on the back of each photograph.

7. FEES.

Before you file your Form EOIR-40 with the Immigration Court, you must pay the fee prescribed in 8 CFR 103.7(b)(1) to the Immigration and Naturalization Service. Evidence of payment of this fee in the form of a fee stamp or a receipt must accompany your Form EOIR-40. This fee will not be refunded, regardless of the action taken on your application. Therefore, it is important that you read the advice, instructions, and application carefully before responding. If you are unable to pay the fee, you may ask the Immigration Judge to permit you to file your Form EOIR-40 without fee.

All fees must be submitted in the exact amount. Remittance may be made by cash, personal check, cashier's check, certified bank check, bank international money order, or foreign draft drawn on a financial institution in the United States and payable to the "Immigration and Naturalization Service" in United States currency. If the applicant resides in the Virgin Islands, the check or money order must be payable to the "Commissioner of Finance of the Virgin Islands." If the applicant resides in Guam, the check or money order must be payable to the "Treasurer, Guam." Personal checks are accepted subject to collectibility. An uncollectible check will render the application and any documents issued pursuant thereto invalid. A charge of \$5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn. When the check is drawn on an account of a person other than the applicant, the name and alien registration number of the applicant must be entered on the face of the check.

8. SERVING & FILING YOUR APPLICATION.

You must serve the following documents on the INS trial attorney:

- a copy of your Form EOIR-40 Application for Suspension of Deportation with all supporting documents and additional sheets,
- evidence of payment of the filing fee or a request for a waiver of the fee by an Immigration Judge,
- the original Biographical Information Form G-325A,
- the original Fingerprint Card, FD-258, and
- a photograph of you which meets the requirements of #6 above.

You must file the following documents with the Immigration Court where your case will be heard:

- the original Form EOIR-40 with all supporting documents and additional sheets,
- evidence of payment of the filing fee or a request for a waiver of the fee by an Immigration Judge,
- a copy of Biographical Information Form G-325A,
- a copy of Fingerprint Card, FD-258,
- a photograph of you which meets the requirements of #6 above, and
- a certificate showing service of these documents on the INS trial attorney, unless service is made on the record at the hearing.

9. PENALTIES.

You must answer all questions on Form EOIR-40 truthfully and submit only genuine documents in support of your application. You will be required to swear or affirm that the contents of your application and the supporting documents are true to the best of your knowledge. Your answer to the questions on this form and the supporting documents you present will be used to determine whether your deportation should be suspended and whether you should be granted permanent resident status. Any answer you give and any supporting document you present may also be used as evidence in any proceeding to determine your right to enter, re-enter, pass through, or reside in the United States. Your application may be denied if any of your answers or supporting documents are found to be false.

(Instructions continued on next page)

Presenting false answers or false documents may also subject you to criminal prosecution. You may be prosecuted under 18 USC 1546 if you submit your application knowing that the application or any supporting document contains any false statement with respect to a material fact or if you swear or affirm that the contents of your application and the supporting documents are true, knowing that the application or any supporting document contains any false statement with respect to a material fact. If convicted, you could be fined up to \$250,000.00, imprisoned for up to 5 years, or both. 18 USC 1546(a), 3559(a)(4), 3571(b)(3).

10. PAPERWORK REDUCTION ACT.

We try to create forms and instructions that are accurate, can easily be understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The reporting burden for this collection of information is computed as follows: 1) learning about the form, 45 minutes, 2) completing the form, 2 hours, and 3) assembling and filing the form, 3 hours, for an estimated average of 5 hours, 45 minutes per response. If you have comments regarding the accuracy of this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, you may write to the U.S. Department of Justice, Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041.

11. REPORTING BURDEN.

A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.